



BEFORE THE
GUAM CIVIL SERVICE COMMISSION



IN THE MATTER OF:

JOSE B. GUEVARA, III

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL
CASE NO. 13-AA02T

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (the "Commission") at its regularly scheduled meeting on June 6, 2013, at its office located at Suite 6A, Sinajana. Present were Employee Jose B. Guevara, III (hereafter "Employee GUEVARA") and his attorney, Jeffrey A. Moots, Esq. Management Port Authority of Guam (hereafter "the Port") was represented by John Bell and Michael Phillips as legal counsel for the Port and Acting General Manager Felix Pangelinan.

I. ISSUE

Was there a procedural defect to justify granting of Employee Guevara's Motion to Dismiss Adverse Action for Violation of 4 Guam Code Annotated Section 4406?

II. HOLDING

By a vote of 4-1 with 1 abstention, the Commission granted Employee Guevara's Motion to Dismiss Adverse Action for Violation of 4 Guam Code Annotated Section 4406. (hereafter "Motion")

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III. JURISDICTION

The jurisdiction of the Civil Service Commission is based on upon the Organic Act of Guam and 4 G.C.A. § 4401 *et. sec.*

IV. FACTS

The Port terminated Employee Guevara on December 18, 2012. Employee Guevara filed his Motion claiming Management violated the sixty (60) day rule on February 13, 2013. Management filed its Opposition to Employee Guevara's Motion on February 21, 2013. Neither party requested to present live testimony at the hearing on the motion as required by CSC AA R 9.2. The hearing on the motion was held on June 6, 2013. At the hearing, the Commission granted Employee Guevara's motion by a vote of 4-1 with one abstention.

Pursuant to the final adverse action served on Employee Guevara, the Port contended that on October 16, 2012, Employee Guevara signed documents certifying the availability for medical treatment and travel related to a worker's compensation claim filed by another employee of the Port. Management further stated in the final adverse action that Employee Guevara knew that the Port had budgeted thirty thousand dollars (\$30,000.00) for the Port's worker compensation expenses and that the costs of the travel and medic cost was nearly one hundred thousand dollars (\$100,000.00). The documents signed by Employee Guevara were presented to the General Manager of the Port, Mary Torres, on ~~December~~ ^{OCTOBER} 16, 2012. the Final Adverse Action was served on Employee Guevara on December 18, 2012; after 62 days after the documents were presented to the Port General Manager.

Employee Guevara contended in his motion that when the documents certifying the availability of the funds were presented to the Port General Manager on December 16, 2012, the sixty (60) days in which Management must serve an employee and adverse action pursuant to 4

1 G.C.A. § 4406 began to run because the Port General Manager knew or should have known that
2 the amount of the medical treatment and travel Employee Guevara certified as being available
3 exceeded the budgeted amount of the Port for worker's compensation related claims. Employee
4 Guevara claimed in his Motion the Port General Manager was aware of the size of the Port's
5 worker's compensation budget on December 16, 2012 when she received the certification of
6 funds. Employee Guevara claims this assertion was supported by a document entitled "Finding
7 of Facts and Conclusions of Law 12/4/12" prepared by the Port's legal counsel and attached to
8 Employee's Motion to Dismiss as Attachment 3. In the document prepared by the Port's legal
9 counsel, legal counsel writes:

10 **Further, Mrs. Torres admitted in the October 19th meeting at**
11 **counsel's office and the October 25th Board meeting that she routinely**
12 **disregarded the Port's self-imposed budget of \$30,000 per year for**
13 **worker's compensation. Aside from routinely exceeding this budget,**
14 **the Port has no legal basis by which to expend travel, medical care or**
15 **other expenses on worker's compensation claims.**

16 Employee Guevara further referenced to the Final Adverse Action Exhibit 36 filed by
17 Management to establish the size of the expenditures related to the worker's compensation claim.
18 Employee Guevara also attached a copy of the Travel Request Authorization and Routing Sheet
19 for the Travel Request showing the document had been received and signed by the General
20 Manager on October 16, 2012.

21 Management in its opposition contended that the sixty (60) days did not begin on October
22 16, 2012, because it is not possible to know that Management knew on October 16, 2012.
23 Management also asserted that statements made by Employee Guevara during and October 25,
24 2012, Board meeting either constituted a new date for the start of the sixty (60) day rule.

25 In the alternative, Management argued that if the October 16, 2012 date did begin the
sixty (60) day period for the service of a final adverse action on Employee Guevara that the
service of the action on the 62nd day was in fact within the requirements of the law.

1 Management asserts that because it served the proposed adverse action on Employee Guevara on
2 December 5, 2012 and were required to provide Employee Guevara ten (10) days to respond, and
3 could not render a final decision until the ten (10) days had expired, and the tenth day fell on a
4 Saturday, they could not, pursuant to 1 G.C.A. § 709, require Employee Guevara to serve his
5 response on that day. However, on page 2 of Management's Opposition to Employee's Motion,
6 Management notes Employee Guevara had filed his response on Friday, December 14, 2012.
7 Management goes on to say that Management extended the reply time for Employee Guevara to
8 Monday, December 17, 2012. Management then claimed the filing on December 18, 2012 was
9 therefore in keeping with the statutory requirements and Civil Service Precedent.

10 Management failed to serve the final adverse action on Employee Guevara within sixty
11 (60) days when Management knew or should have known the facts that Management alleges
12 forms the grounds for the adverse action. The date when Management knew or should have
13 known facts which form the basis of the adverse action is October 16, 2012. The alleged
14 statements made by Employee Guevara on October 16, 2012. The statements but a continuation
15 of the conduct alleged to have begun on October 16, 2012. The statements allegedly made on
16 October 25, 2012 do not constitute acts of fraud or concealment because they in no way
17 prevented Management from discovering or investigating the alleged misconduct.

18 V. CONCLUSION

19 By a vote of 4-1 with 1 abstention, the Commission finds Management failed to serve
20 Employee Guevara with his final adverse action within sixty (60) days. The Commission further
21 finds none of the explanations provide by Management are legal justification for failing to
22 comply with the statutory mandate of 4 G.C.A. § 4406. Therefore, the adverse action taken
23 against Employee Guevara is null and void.

24 The Port Authority of Guam is hereby ordered to immediately reinstate Employee Jose B.

1 Guevara to his prior position of employment. The Port Authority of Guam is further ordered to
2 fully compensate Employee Jose B. Guevara for all the time following his termination on
3 December 18, 2012 until the date he is reinstated to his prior position of employment. The
4 compensation shall include all employer's contributions to the Government of Guam Retirement
5 Fund as well as the accumulation of vacation and sick days for all the pay periods between
6 December 18, 2012 and the date Employee Guevara is reinstated.

7 The Port Authority of Guam is further ordered to pay the attorney's fees incurred by
8 Employee Jose B. Guevara, III during the appeal of the December 18, 2012, adverse action in the
9 amount of \$9,380.95.

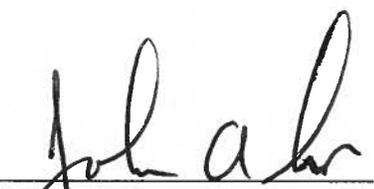
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11 So ordered this 13th day of May, 2013 *nunc pro tunc* to June 6, 2013.

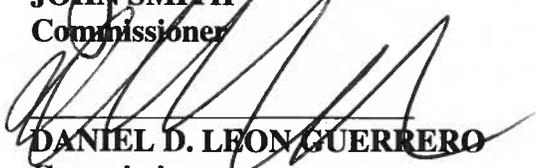
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13 **MANUEL R. PINAUIN**
14 **Chairman**

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16 **PRISCILLA T. TUNCAP**
17 **Commissioner**

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19 **LOURDES HONGYEE**
20 **Commissioner**

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22 **EDITH C. PANGELINAN**
23 **Commissioner**

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25 **JOHN SMITH**
Commissioner


DANIEL D. LEON GUERRERO
Commissioner